

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA, the)
STATE OF TEXAS, the STATE OF COLORADO,)
the STATE OF INDIANA, the STATE OF IOWA,)
the STATE OF MINNESOTA, the STATE OF)
NEW MEXICO, the STATE OF TENNESSEE,)
the STATE OF WASHINGTON, *ex rel.* HICHEM) Civil Action No. 4:18-cv-00123
CHIHI,)
)
Plaintiff-Relator,)
)
v.)
)
CATHOLIC HEALTH INITIATIVES, et al.)
)
Defendants.)

**CHI DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY BRIEF
IN SUPPORT OF THEIR CORRECTED MOTION TO STRIKE UNDER SEAL**

Defendants Catholic Health Initiatives (“CHI”) and CHI-St. Luke’s Health (“CHI-St. Luke’s”; collectively, the “CHI Defendants”), by and through undersigned counsel, respectfully move the Court for leave to file under seal their Reply Brief in Support of their Corrected Motion to Strike Paragraphs 114 Through 120 From the First and Second Amended Complaint (“Motion for Leave”), stating:

1. On February 1, 2019, the Court ordered the Original Complaint (Doc. 1) and Paragraphs 114 through 120 of the First Amended Complaint (Doc. 5) be temporarily placed under seal pending resolution of CHI Defendants’ motions to dismiss and strike. (Doc. 98).
2. The Court’s order was prompted by CHI Defendants’ assertion that Paragraphs 114 through 120 improperly pled attorney-client privileged communications,

which Relator Hichem Chihi did not have the authority to disclose or waive.

3. The CHI Defendants filed their Motion to Dismiss Relator's First Amended Complaint and a motion to strike ("Motion to Strike") on April 9, 2019. The CHI Defendants filed their Corrected Motion to Strike on December 23, 2019.

4. On January 13, 2020, Relator filed his Response in Opposition to Defendants' Motion to Strike under seal.

5. Defendants' Reply Brief in Support of their Corrected Motion to Strike Paragraphs 114 Through 120 From the First and Second Amended Complaint (the "Reply") necessarily references and quotes portions of Paragraphs 114 through 120 and addresses the substance of the privileged allegations throughout. Inclusion of the privileged communications in the Reply is required for the Court to be fully briefed on the issues at hand.

6. In keeping with the Court's Order, and to continue the preservation of CHI Defendant's attorney-client privilege, the Reply should be filed under seal.

7. Paragraph 6.B.2 of the Administrative Procedures for Electronic Filing in Civil and Criminal Cases permits the filing of documents under seal and Paragraph 6E states "the presiding Judge may order the sealing or unsealing of any document."

8. For these reasons, good cause exists for the Court to seal the Reply.

WHEREFORE, CHI Defendants respectfully move this Court for leave to file their Reply Brief in Support of their Corrected Motion to Strike Paragraphs 114 Through 120 From the First and Second Amended Complaint.

Dated: January 21, 2020

Respectfully submitted,

POLSINELLI PC

By: /s/ Brian F. McEvoy

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**ATTORNEYS FOR CHI
DEFENDANTS**

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements set forth in Hon. Charles R. Eskridge III's Court Procedures. This motion contains 334 words, excluding the case caption, table of contents, table of authorities, signature block, and certificates, and was prepared in 13-point Times New Roman font.

/s/ Brian F. McEvoy
Attorney for CHI Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of January, 2020, a true and correct copy of the foregoing was electronically served on counsel for all parties properly registered to receive notice via the Court's CM/ECF system.

/s/ Brian F. McEvoy

Attorney for CHI Defendants

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Defendants has conferred in good faith with Ruth Brown, counsel for Relator, regarding the subject matter of this motion. Counsel for Relator and counsel for CHI Defendants were unable to reach an agreement on whether the First Amended Complaint and Second Amended Complaint contain attorney-client privileged communications, but agree to submit the relevant briefs under seal pending the Court's adjudication of Defendants' Motion to Strike.

/s/ Brian F. McEvoy
Attorney for CHI Defendants